

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Angel Riddle	Team: Squad #5	CCRB Case #: 202006463	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/23/2020 8:50 PM	Location of Incident: West 172nd Street between Inwood Avenue and Jerome Avenue	Precinct: 44	18 Mo. SOL 3/23/2022	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 09/24/2020 11:28 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 09/24/2020 11:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Michael Sambrato	06414	961232	044 PCT
2. DT3 William Cullen	02509	950257	044 PCT
3. PO William Garner	20756	951760	044 PCT
4. SGT Juan Burgos	05644	932380	044 PCT
5. PO Jeuri Paulino	11935	954220	044 PCT
6. SGT Felix Acosta	04308	939841	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Florian Gega	10702	968432	044 PCT
2. PO Michael Meneses	11225	964654	044 PCT
3. PO Jorge Flores	07680	954816	044 PCT
4. PO Wesam Isaac	29203	944088	044 PCT
5. PO Safayath Jamil	13348	960722	044 PCT
6. PO Richard Luna	26201	964132	044 PCT
7. PO Rieguy Fernandez	02281	961759	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Felix Acosta	Discourtesy: Sergeant Felix Acosta spoke discourteously to § 87(2)(b)	
B.SGT Felix Acosta	Discourtesy: Sergeant Felix Acosta spoke discourteously to § 87(2)(b)	
C.SGT Felix Acosta	Abuse: Sergeant Felix Acosta stopped § 87(2)(b)	
D.SGT Felix Acosta	Abuse: Sergeant Felix Acosta stopped § 87(2)(b)	
E.SGT Felix Acosta	Abuse: Sergeant Felix Acosta stopped § 87(2)(b)	
F.SGT Felix Acosta	Abuse: Sergeant Felix Acosta stopped § 87(2)(b)	
G.SGT Felix Acosta	Abuse: Sergeant Felix Acosta stopped § 87(2)(b)	
H.SGT Felix Acosta	Abuse: Sergeant Felix Acosta stopped § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.SGT Felix Acosta	Abuse: Sergeant Felix Acosta frisked § 87(2)(b)	
J.SGT Felix Acosta	Abuse: Sergeant Felix Acosta frisked § 87(2)(b)	
K.SGT Felix Acosta	Abuse: Sergeant Felix Acosta frisked § 87(2)(b)	
L.SGT Felix Acosta	Abuse: Sergeant Felix Acosta frisked § 87(2)(b)	
M.SGT Felix Acosta	Abuse: Sergeant Felix Acosta frisked § 87(2)(b)	
N.SGT Felix Acosta	Abuse: Sergeant Felix Acosta frisked § 87(2)(b)	
O.SGT Felix Acosta	Abuse: Sergeant Felix Acosta searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
P.SGT Felix Acosta	Abuse: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.	
Q.SGT Felix Acosta	Abuse: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.	
R.SGT Felix Acosta	Abuse: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.	
S.SGT Felix Acosta	Abuse: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.	
T.SGT Felix Acosta	Abuse: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.	
U.SGT Felix Acosta	Abuse: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On September 24, 2020, § 87(2)(b) filed this complaint on the CCRB website (BR49) on behalf of himself, § 87(2)(b), § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b).

On September 23, 2020, at approximately 8:50 p.m., at West 172nd Street between Inwood Avenue and Jerome Avenue in the Bronx, § 87(2)(b) was sitting inside his parked vehicle. § 87(2)(b) and § 87(2)(b) were also in the vehicle. § 87(2)(b) and § 87(2)(b) were standing beside the vehicle. The six men were hanging out in and around the vehicle, drinking alcohol, and smoking marijuana. A large number of 44th Precinct officers arrived at the location in response to a 911 caller who reported seeing a man place a firearm beneath § 87(2)(b) vehicle, including Sergeants Felix Acosta and Juan Burgos, Detective William Cullen, and Police Officers Michael Meneses, Florian Gega, Michael Sambrato, William Garner, Jeuri Paulino, Jorge Flores, Wesam Isaac, Safayath Jamil, Rochard Luna, and Rieguy Fernandez. Sgt. Acosta approached the vehicle and used the phrase, “Holy shit,” twice while speaking to § 87(2)(b) and § 87(2)(b) (**Allegations A-B: Discourtesy**, § 87(2)(g)). Sgt. Acosta initiated a stop of all six men, directed officers to frisk them, and frisked some of them himself (**Allegations C-N: Abuse of Authority**, § 87(2)(g)). Sgt. Acosta also searched § 87(2)(b) vehicle and supervised other officers doing so (**Allegation O: Abuse of Authority**, § 87(2)(g)). The officers did not locate a firearm during the incident and did not arrest or issue summonses to any of the men. Sgt. Acosta failed to provide RTKA business cards to all six men (**Allegations P-U: Abuse of Authority**, § 87(2)(g), § 87(4-b)).

§ 87(2)(b)

§ 87(2)(b)

The investigation obtained BWC footage (BR01-14, summarized at BR15-28). The investigation also obtained cellphone footage from § 87(2)(b) (BR29-31). All references to video evidence below refer to the time stamp in the video player, and not to any on-screen clock embedded in the footage itself.

Sgt. Acosta has since been reassigned to the Traffic Enforcement District. Det. Cullen has been reassigned to the Criminal Intelligence Section. PO Isaac has been reassigned to the 14th Precinct.

Findings and Recommendations

Allegation (A) Discourtesy: Sergeant Felix Acosta spoke discourteously to § 87(2)(b)

Allegation (B) Discourtesy: Sergeant Felix Acosta spoke discourteously to § 87(2)(b)

In addition to his online complaint (BR49), § 87(2)(b) provided testimony in an initial phone statement (BR38). § 87(2)(b) also agreed to provide sworn testimony in a formal interview and began doing so (BR39), but the call ended in the early stages of the interview. § 87(2)(b) ignored subsequent contact attempts before eventually hanging up on the undersigned. The investigation was unable to locate § 87(2)(b). None of the other civilians involved provided testimony regarding these allegations.

Sgt. Acosta’s BWC footage (BR06, beginning at approximately 03:05) shows that he used the phrase, “Holy shit,” twice when speaking to § 87(2)(b) and § 87(2)(b) upon first approaching them.

Sgt. Acosta (BR43) acknowledged making the remark after viewing the BWC footage. Sgt. Acosta explained that it was an instinctive remark in response to his seeing how many men were inside the parked vehicle and that they were openly smoking marijuana.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must “maintain a higher standard of integrity than is generally expected of others.” Patrol Guide Procedure 200-02 (BR45). The NYPD’s disciplinary decisions “have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.” NYPD Disciplinary Case No. 76927/04 (2004) (BR50).

§ 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Felix Acosta stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Sergeant Felix Acosta stopped § 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Felix Acosta stopped § 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Felix Acosta stopped § 87(2)(b)

Allegation (G) Abuse of Authority: Sergeant Felix Acosta stopped § 87(2)(b)

Allegation (H) Abuse of Authority: Sergeant Felix Acosta stopped § 87(2)(b)

Allegation (I) Abuse of Authority: Sergeant Felix Acosta frisked § 87(2)(b)

Allegation (J) Abuse of Authority: Sergeant Felix Acosta frisked § 87(2)(b)

Allegation (K) Abuse of Authority: Sergeant Felix Acosta frisked § 87(2)(b)

Allegation (L) Abuse of Authority: Sergeant Felix Acosta frisked § 87(2)(b)

Allegation (M) Abuse of Authority: Sergeant Felix Acosta frisked § 87(2)(b)

Allegation (N) Abuse of Authority: Sergeant Felix Acosta frisked § 87(2)(b)

Allegation (O) Abuse of Authority: Sergeant Felix Acosta searched the vehicle in which

§ 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Sgt. Acosta initiated the stop, that he frisked some of the men and supervised other officers in frisking them, and that he searched the vehicle and supervised other officers doing so. As Sgt. Acosta was in charge and directing officers during the incident, these allegations are pleaded solely against him.

As noted above, the investigation obtained some testimony, but no sworn statement, from § 87(2)(b). The investigation also conducted a sworn interview with § 87(2)(b) (BR40), and obtained a brief phone statement and a sworn interview statement from § 87(2)(b) (BR41-42). The investigation was unable to locate § 87(2)(b) or § 87(2)(b). The investigation did reach § 87(2)(b) by phone, but he claimed the undersigned was a “scammer” and refused to engage in a conversation about the incident.

§ 87(2)(b) confirmed that his vehicle had no license plates and was not registered. He had recently purchased it and had left it parked and merely used it as a location to spend time. He recounted that the men had been rolling dice together, but that this took place long before any officers arrived. § 87(2)(b) and § 87(2)(b) provided differing testimony regarding whether any members of the group possessed or were smoking marijuana, whether there was an odor of marijuana in and around the vehicle, and whether there was any alcohol in the vehicle. § 87(2)(b) and § 87(2)(b) both denied that anyone was smoking marijuana or had been doing so, and they denied that there

was any odor of marijuana. § 87(2)(b) however, testified that the men were smoking marijuana right up until the incident, and that they only stopped doing so at the sight of officers. § 87(2)(b) denied that there were any drugs or alcohol in the vehicle, but § 87(2)(b) testified that they had a half-full bottle of unspecified alcohol in the car.

In sum, the comprehensive BWC footage showed that Sgt. Acosta and the other officers responded to a 911 call from a named caller located in a nearby building, who reported seeing a man with a firearm beside a parked vehicle. The investigation did not obtain the 911 Event log, but the BWC footage and the Stop Reports later prepared by PO Flores (BR51) make clear that the 911 caller was a man who provided his phone number and the surname § 87(2)(b) that he gave a description of the parked vehicle, that he reported seeing a man with a gun near the vehicle, and that he reported that a group of men remained in and around the vehicle. Both Sgt. Acosta and PO Flores spoke directly to § 87(2)(b) on their cellphones once they were on scene, as they gained more information from him so they could locate the parked vehicle. § 87(2)(b) was still viewing the scene from inside his building, and PO Flores and Sgt. Acosta described nearby businesses to help § 87(2)(b) guide them in the correct direction. Sgt. Acosta's footage (BR06, at approximately 02:33) shows him making final confirmation with § 87(2)(b) that § 87(2)(b) vehicle, which was parked near a prominent tree, is the correct vehicle. Sgt. Acosta then approached the vehicle from the sidewalk, and found § 87(2)(b) and § 87(2)(b) standing beside the open front and rear driver's side doors. § 87(2)(b) was still visibly smoking when Sgt. Acosta approached. It is difficult to discern in the footage whether any of the other men were smoking at that moment. The footage shows that Sgt. Acosta directed officers to frisk § 87(2)(b) and § 87(2)(b) and directed the four men inside the vehicle to each exit one at a time, such that officers could frisk each one before the next man exited. Sgt. Acosta and other officers then searched throughout the vehicle.

The BWC footage confirmed that the vehicle contained marijuana and that the men had been smoking marijuana in it. It also showed that multiple officers made contemporaneous remarks about the strong odor of marijuana emanating from the vehicle. PO Luna's BWC footage (BR03, at approximately 07:20) shows a large amount of loose bits of green leafy material on the driver's seat and the floor around it. PO Flores's BWC footage (BR04, at approximately 06:56) shows a large amount of semi-burned, greenish material in the center console ash tray. In addition, PO Garner's BWC footage shows that § 87(2)(b) verbally confirmed that he had marijuana on his person. PO Flores also noted the existence of a "strong odor of marijuana" on the Stop Reports he prepared (BR51). Incidentally, it should be noted that NYPD records revealed that § 87(2)(b) had been arrested 12 days beforehand for possessing a handgun at a location approximately four blocks from the location of this incident (BR53).

After the initial frisks and vehicle searches did not discover a gun, Det. Cullen called § 87(2)(b) back. Det. Cullen's BWC footage (BR09, beginning at approximately 03:48) captured this phone conversation. § 87(2)(b) recounted seeing a heavyset man remove a firearm from his waistline, place it beneath § 87(2)(b) vehicle, and then walk away. § 87(2)(b) confirmed that he was still watching the ongoing incident and confirmed that the officers were searching the correct vehicle. He noted, however, that he no longer saw the heavyset man on scene. Det. Cullen relayed this information to Sgt. Acosta, who directed officers to continue searching the vehicle and the area beneath it. Officers also searched more broadly in the surrounding area and searched beneath other parked cars. Ultimately, the officers did not locate a firearm.

Sgt. Acosta's testimony was largely consistent with the BWC footage and the narrative of the Stop Reports, though he was not interviewed until more than 16 months after the incident and his recollection was not as detailed as the footage itself (BR43).

The evidence makes clear that the officers correctly detected an odor of marijuana emanating from § 87(2)(b) vehicle.

An odor of marijuana emanating from a vehicle provides officers sufficient cause to search the vehicle and its occupants. *People v. Chestnut*, 43 A.D.2d 260 (1974) (*still in effect at the time of this incident*) (BR54).

It is clear that Sgt. Acosta and the other officers came to scrutinize the men due to the report from § 87(2)(b) and that they frisked the men and searched the vehicle intent upon locating a firearm.

§ 87(2)(g)

Allegation (P) Abuse of Authority: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.

Allegation (Q) Abuse of Authority: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.

Allegation (R) Abuse of Authority: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.

Allegation (S) Abuse of Authority: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.

Allegation (T) Abuse of Authority: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.

Allegation (U) Abuse of Authority: Sergeant Felix Acosta failed to provide § 87(2)(b) with a business card.

It is undisputed that Sgt. Acosta did not offer business cards to any of the men. As noted above, Sgt. Acosta supervised and directed officers to stop and frisk all of the men and to search their parked vehicle, and the incident did not result in any summonses or arrests.

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) all testified that no officer offered business cards to any of the men during the incident.

Sgt. Acosta provided multiple reasons for why he did not provide or offer business cards to any of the civilians. He noted that none of them asking him for a business card during the incident. He also noted that the incident took place near the conclusion of his tour, and that he had already run out of business cards by the time of the incident. Finally, he recounted that he saw PO Flores writing his name on what he believed were business cards, and that PO Flores told him that he gave a card to the civilians.

It was not necessary to interview PO Flores to reach dispositions for these allegations. PO Flores prepared four Stop Reports documenting the incident (BR51). The reports do not include names or dates of birth, and it is therefore difficult to determine which report pertains to which man. Regardless, PO Flores noted on all four reports that a business card was not offered to any of the four men, because, as PO Flores wrote, he “did not initiate [the] stop.” The reports also show that Sgt. Acosta personally reviewed them, and in fact that he initially rejected them and directed PO Flores to update their narrative portions. In addition, the conclusion of PO Flores’ BWC footage (BR04) shows him beginning to walk away from the scene without having offered business cards to anyone or having written information on any business cards, and none of the other BWC footage captures any officer ever offering or providing a business card to any of the men.

§ 87(2)(g)

New York City Administrative Code 14-174 (BR44) and Patrol Guide Procedure 203-09 (in effect at the time of the incident) (BR52) require officers to proactively offer business cards to any civilian whom they stop or frisk, and to civilians whose vehicles they search, for incidents which do not result in an arrest or summons. An officer need not provide a card when “exigent circumstances require immediate action by such officer,” such as physical resistance, flight, imminent danger of physical injury or damage to property. Moreover, officers are required to carry an “appropriate amount” of pre-printed cards, and then an appropriate amount of generic business cards if they run out of pre-printed cards. If an officer runs out of both types of cards, he is required to verbally provide the information contained on the card to each civilian and must allow the civilian ample time to write down the information.

Sgt. Acosta initiated the stops during the incident and was personally responsible for other officers frisking the men and searching their vehicle. The incident did not result in any arrests or summonses and there were no relevant exigent circumstances. Sgt. Acosta was therefore responsible either for offering his business cards to the men or at least ensuring that other officers did so. If Sgt. Acosta had indeed run out of business cards, he was required to proactively provide the information to the men verbally. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) or § 87(2)(b) has been a party (BR32-33 & BR35-37).

